

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	MDL No. 1456
IN RE PHARMACEUTICAL INDUSTRY	)	Master File No. 01-12257-PBS
AVERAGE WHOLESALE PRICE LITIGATION	)	
_____	)	Judge Patti B. Saris
	)	
THIS DOCUMENT RELATES TO:	)	
State of California, <i>ex rel.</i> Ven-A-Care v.	)	
Abbott Laboratories, Inc., <i>et al.</i>	)	
CASE #: 1:03-cv-11226-PBS	)	
_____	)	

**STATE OF CALIFORNIA'S AND *QUI TAM* PLAINTIFF'S**  
**STATUS REPORT-MARCH 1, 2006**

The undersigned counsel, on behalf of plaintiff STATE OF CALIFORNIA ("CALIFORNIA") and *qui tam* plaintiff VEN-A-CARE OF THE FLORIDA KEYS, INC. ("VEN-A-CARE" or "*qui tam* plaintiff"), hereby submit the attached Status Report to the Court in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

BILL LOCKYER  
Attorney General for the State of California

Dated: March 1, 2006

By:           /s/ Nicholas N. Paul            
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Dated: March 1, 2006

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**Attorneys for *Qui Tam* Plaintiff,  
VEN-A-CARE OF THE FLORIDA KEYS, INC.**

**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories, Inc., *et al.***  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention on August 25, 2005.

**Motion to File Unredacted Exhibits Under Seal**

On August 25, 2005, plaintiffs filed a motion for leave to file unredacted Exhibits under seal. The Exhibits are Exhibits A-K and Exhibits M-R to the First Amended Complaint in Intervention. Redacted versions of such Exhibits were filed (and served on existing parties through Verilaw) on August 25, 2005, along with the First Amended Complaint in Intervention. The Court granted such motion, and the unredacted Exhibits have been filed under seal.

**State of California's Election to Decline**

On September 9, 2005, the State of California filed a motion for leave to file "State of California's Election to Decline as to Certain Defendants and Allegations" ("Election to Decline") under seal, which the Court granted on September 14, 2005. The Election to Decline was filed under seal on September 14, 2005.

***Qui Tam* Plaintiff's Notice of Election/Dismissal**

On or about September 12, 2005, the *qui tam* plaintiff filed a motion for leave to file its "Notice of Election to Proceed and Notice of Dismissal" ("Notice of Election/Dismissal") under seal. The Court granted such motion, and the Notice of Election/Dismissal was filed under seal on September 14, 2005.

**Case Management Order (CMO) 18**

On December 13, 2005, the Court issued CMO 18, providing a briefing schedule for the served Defendants' motions to dismiss, as well as rules regarding the conduct of discovery and

document access during the period required to brief and decide the motions to dismiss.

### **Motions to Dismiss**

On January 17, 2006, the served Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. In addition, Abbott Laboratories Inc., B. Braun of America Inc. and ZLB Behring LLC filed individual Motions to Dismiss.

### **Oppositions to Motions to Dismiss**

Plaintiffs anticipate filing their Oppositions to the joint and individual Motions to Dismiss on or before March 3, 2006, in accordance with CMO 18 and based on the date on which the joint and individual Motions to Dismiss were served and filed. In addition, Plaintiffs intend to file a motion in response to Defendants' request, in a footnote within their Joint Motion to Dismiss, for judicial notice of the documents attached to their Motion to Dismiss.

### **Additional Miscellaneous Filings**

(1) On January 18, 2006, Plaintiff California filed a Motion to File under Seal its Ex Parte Application for a partial lifting of the seal. The Court granted that Motion on January 27, 2006, and granted the partial lifting of the seal on February 2, 2006.

(2) On January 27, 2006, Plaintiff California filed a Motion to File Under Seal a Stipulation and Proposed Order to Extend Seal of Relator's First Amended Complaint as to certain specific Defendants. The Court granted the Motion to File the Stipulation Under Seal on February 16, 2006. The Court denied the Stipulation on February 17, 2006.

### **Anticipated Filings**

Plaintiffs anticipate a motion to modify CMO 18, or for a new CMO, to be coordinated and jointly filed with Defendants, in order to establish an additional briefing schedule for four (4) foreign Defendants for whom foreign service is currently underway but not yet completed, which

would set forth a single set of dates for briefing all of the foreign Defendants' anticipated Motions to Dismiss.

California may file additional motions/pleadings, under seal when necessary, to dispose of the state's interests in matters remaining under seal. Plaintiffs will request a Status Conference and the entry of a Case Management Order by a motion to be filed after the Court has adjudicated the served Defendants' joint and individual Motions to Dismiss. In addition, the Relator will file its Second Amended Complaint with respect to the remaining Defendants and claims that have not been dismissed and on which California has thus far declined to intervene.

#### **CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on March 1, 2006, I caused a true and correct copy of the foregoing, **STATE OF CALIFORNIA'S AND *QUI TAM* PLAINTIFF'S STATUS REPORT-MARCH 1, 2006**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

Dated: March 1, 2006

/s/ Nicholas N. Paul  
NICHOLAS N. PAUL  
Supervising Deputy Attorney General